

Internal Revenue bulletin

Bulletin No. 1997-36
September 8, 1997

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 97-95, page 12.

This announcement changes the location of the public hearing that will be held on October 28, 1997, on proposed regulations (REG-107644-97, 1997-32 I.R.B. 24) that would permit an amendment to a qualified plan that eliminates certain preretirement optional forms of benefit.

INCOME TAX

Rev. Rul. 97-36, page 5.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for September 1997.

T.D. 8724, page 4.

Final regulations under section 1059 of the Code relate to extraordinary dividends.

Notice 97-49, page 8.

Electing Small Business Trust (ESBT) and qualification and treatment of distributions. This notice clarifies the definitions of beneficiary and potential current beneficiary. It also clarifies the treatment of ESBT distributions.

EMPLOYEE PLANS

Announcement 97-89, page 10.

Beginning October 1, 1997, requests for employee plan

determination letters and applications for recognition of tax exemption, formerly sent to the district office in Brooklyn, New York, should be sent to the Internal Revenue Service Center in Covington, Kentucky.

EXEMPT ORGANIZATIONS

Announcement 97-89, page 10.

Beginning October 1, 1997, requests for employee plan determination letters and applications for recognition of tax exemption, formerly sent to the district office in Brooklyn, New York, should be sent to the Internal Revenue Service Center in Covington, Kentucky.

Announcement 97-90, page 10.

A list is given of organizations now classified as private foundations.

ADMINISTRATIVE

Announcement 97-93, page 11.

REG-252487-96, 1997-25 I.R.B. 9, relating to the application of the grantor trust rules to certain trusts established by foreign persons, is corrected.

Announcement 97-94, page 12.

This announcement contains additional corrections to the corrected version of REG-252487-96, shown in Announcement 97-93, on page 11 of this Bulletin.

Finding Lists begin on page 14.



Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted federal long-term rate is set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 641.—Imposition of Tax

How are electing small business trust distributions treated under section 641(d)? See Notice 97-49, page 8.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 1059.—Corporate Shareholder's Basis in Stock Reduced by Nontaxed Portion of Extraordinary Dividends

26 CFR 1.1059(e)-1: Non-pro rata redemptions.

T.D. 8724

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Section 1059 Extraordinary Dividends

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1059(e) of the Internal Revenue Code. The final regulations clarify that certain distributions in redemption of stock held by a corporate shareholder are treated as extraordinary dividends notwithstanding provisions that otherwise might exempt the distributions from extraordinary dividend treatment. Corporations that receive a distribution in redemption of stock may be affected if the redemption is either part of a partial liquidation of the redeeming corporation or is not pro rata as to all shareholders. The

final regulations also provide that section 1059(e)(1) applies to certain exchanges described in section 356.

DATES: This regulation is effective July 16, 1997.

For date of applicability, see §1.1059(e)-1(c).

FOR FURTHER INFORMATION CONTACT: Richard K. Passales, (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1996, the IRS published in the **Federal Register** a notice of proposed rulemaking (CO-9-96), 61 F.R. 30845, concerning certain distributions under section 1059(e)(1) of the Internal Revenue Code. The proposed rules were based on the conclusion that applying the exceptions to extraordinary dividend treatment found in sections 1059(d)(6) and (e)(2) to amounts treated as extraordinary dividends under section 1059(e)(1) is inconsistent with the purposes of section 1059 and may create inappropriate consequences, such as basis shifting that eliminates gain or creates artificial loss.

The IRS received a few comments on the proposed regulations. No one requested to speak at the public hearing. After consideration of all the comments, the regulations are adopted as revised by this Treasury decision. The revisions and significant comments are discussed below.

Explanation of Revisions

Section 1.1059(e)-1(b) of the proposed regulations provides that for purposes of section 1059(e)(1), an exchange under section 356(a)(1) is treated as a redemption and, to the extent any amount is treated as a dividend under section 356(a)(2), it is treated as a dividend under section 301. One practitioner questioned whether §1.1059(e)-1(b) applies to exchanges for section 306 stock that are treated as section 301 distributions under section 356(e). The final regulations clarify that for purposes of section 1059(e)(1), all exchanges under section

356 are treated as redemptions and all amounts treated as a dividend under section 356(a)(2) are treated as dividends under section 301. Accordingly, the final regulations delete the reference to subsection (a)(1) of section 356.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Richard K. Passales, Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1059(e)–1 also issued under 26 U.S.C. 1059(e)(1) and (e)(2). * * *

Par. 2. In §1.302–2, paragraph (c) introductory text is amended by adding a sentence immediately following the first sentence to read as follows:

§1.302–2 Redemptions not taxable as dividends.

* * * * *

(c) * * * (For adjustments to basis required for certain redemptions of corporate shareholders that are treated as extraordinary dividends, see section 1059 and the regulations thereunder.) * * *

* * * * *

Par. 3. Section 1.1059(e)–1 is added to read as follows:

§1.1059(e)–1 Non-pro rata redemptions.

(a) *In general.* Section 1059(d)(6) (exception where stock held during entire existence of corporation) and section 1059(e)(2) (qualifying dividends) do not apply to any distribution treated as an extraordinary dividend under section 1059(e)(1). For example, if a redemption of stock is not pro rata as to all shareholders, any amount treated as a dividend under section 301 is treated as an extraordinary dividend regardless of whether the dividend is a qualifying dividend.

(b) *Reorganizations.* For purposes of section 1059(e)(1), any exchange under section 356 is treated as a redemption and, to the extent any amount is treated as a dividend under section 356(a)(2), it is treated as a dividend under section 301.

(c) *Effective date.* This section applies to distributions announced (within the meaning of section 1059(d)(5)) on or after June 17, 1996.

Michael P. Dolan,
*Acting Commissioner of
Internal Revenue.*

Approved June 27, 1997.

Donald C. Lubick,
*Acting Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on July 15, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 16, 1997, 62 F.R. 38027)

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of section 1274, 1288, 382, and other sections of the Code, tables set forth the rates for September 1997.

Rev. Rul. 97–36

This revenue ruling provides various prescribed rates for federal income tax purposes for September 1997 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 97-36 TABLE 1
Applicable Federal Rates (AFR) for September 1997

Period for Compounding

| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
|-------------------|---------------|-------------------|------------------|----------------|
| <i>Short-Term</i> | | | | |
| AFR | 5.81% | 5.73% | 5.69% | 5.66% |
| 110% AFR | 6.40% | 6.30% | 6.25% | 6.22% |
| 120% AFR | 7.00% | 6.88% | 6.82% | 6.78% |
| 130% AFR | 7.59% | 7.45% | 7.38% | 7.34% |
| <i>Mid-Term</i> | | | | |
| AFR | 6.23% | 6.14% | 6.09% | 6.06% |
| 110% AFR | 6.86% | 6.75% | 6.69% | 6.66% |
| 120% AFR | 7.51% | 7.37% | 7.30% | 7.26% |
| 130% AFR | 8.14% | 7.98% | 7.90% | 7.85% |
| 150% AFR | 9.42% | 9.21% | 9.11% | 9.04% |
| 175% AFR | 11.04% | 10.75% | 10.61% | 10.52% |
| <i>Long-Term</i> | | | | |
| AFR | 6.55% | 6.45% | 6.40% | 6.36% |
| 110% AFR | 7.23% | 7.10% | 7.04% | 7.00% |
| 120% AFR | 7.89% | 7.74% | 7.67% | 7.62% |
| 130% AFR | 8.57% | 8.39% | 8.30% | 8.25% |

REV. RUL. 97-36 TABLE 2
Adjusted AFR for September 1997

Period for Compounding

| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
|----------------------------|---------------|-------------------|------------------|----------------|
| Short-term adjusted AFR | 3.94% | 3.90% | 3.88% | 3.87% |
| Mid-term adjusted AFR | 4.28% | 4.24% | 4.22% | 4.20% |
| Long-term adjusted AFR | 5.09% | 5.03% | 5.00% | 4.98% |

REV. RUL. 97-36 TABLE 3
Rates Under Section 382 for September 1997

| | |
|--|-------|
| Adjusted federal long-term rate for the current month | 5.09% |
| Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.) | 5.45% |

REV. RUL. 97-36 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for September 1997

| | |
|--|-------|
| Appropriate percentage for the 70% present value low-income housing credit | 8.50% |
| Appropriate percentage for the 30% present value low-income housing credit | 3.64% |

REV. RUL. 97-36 TABLE 5

Rate Under Section 7520 for September 1997

| | |
|---|------|
| Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest | 7.6% |
|---|------|

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1997. See Rev. Rul. 97-36, page 5.

Part III. Administrative, Procedural, and Miscellaneous

Electing Small Business Trusts

Notice 97-49

BACKGROUND

Section 1302 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755 (1996), amended § 1361 of the Internal Revenue Code to permit an electing small business trust (ESBT) to be a shareholder of an S corporation. This notice provides guidance regarding the definitions of beneficiary and potential current beneficiary under §§ 1361(e)(1)(A)(i) and 1361(e)(2) respectively, and the ordering of ESBT distributions under § 641(d).

Only a corporation that meets the definition of a small business corporation may be an S corporation. To be a small business corporation, the corporation may have as shareholders only those persons permitted by § 1361(b)(1), including trusts described in § 1361(c)(2). Section 1361(c)(2) contains two separate provisions. The first provision is a requirement that the trust holding stock in the corporation must be a trust listed in § 1361(c)(2)(A) (e.g., ESBT, qualified subchapter S trust, etc.). Under the second provision, the respective persons listed in § 1361(c)(2)(B) are treated as shareholders of the S corporation for purposes of the shareholder restrictions under § 1361(b)(1). To qualify as an ESBT (an eligible trust under § 1361(c)(2)(A)(v)), a trust must meet the requirements set forth in § 1361(e)(1) (including the limitation on the types of beneficiaries). Pursuant to § 1361(c)(2)(B)(v), the ESBT's potential current beneficiaries (as defined in § 1361(e)(2)) must be qualifying shareholders of the S corporation for purposes of § 1361(b)(1).

As used in this notice, the term "distributee trust" means a trust that is receiving or may receive a distribution from an intended ESBT, whether the rights to receive the distribution are fixed or contingent, or immediate or deferred.

ESBT BENEFICIARIES

Section 1361(e)(1)(A)(i) provides that an ESBT may not have as a beneficiary any

person other than (I) an individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c), which holds a contingent interest and is not a potential current beneficiary. For tax years beginning after December 31, 1997, the clause "which holds a contingent interest and is not a potential current beneficiary" is deleted. Section 1361(e) does not provide a specific definition of the term "beneficiary".

Solely for purposes of section 1361(e)(1)(A)(i), the following rules apply in defining the term "beneficiary":

1. The term "beneficiary" does not include a distributee trust (other than a trust described in paragraphs (2) or (3) of § 170(c)), but does include those persons who have a beneficial interest in the property held by the distributee trust. For example, an intended ESBT's governing instrument provides for discretionary distributions of income or principal to A for life, and upon A's death the division of the remainder into separate trusts for the benefit of A's children. For purposes of § 1361(e)(1)(A)(i), the beneficiaries of the intended ESBT are A and A's children, and not the separate trusts for the benefit of A's children. Therefore, because all the beneficiaries of the intended ESBT are individuals, the intended ESBT meets the requirements of § 1361(e)(1)(A)(i).

2. The term "beneficiary" does not include a person in whose favor a power of appointment could be exercised. Such a person becomes a beneficiary only when the holder of the power of appointment actually exercises the power of appointment in such person's favor.

3. The term "beneficiary" does not include a person whose contingent interest is so remote as to be negligible. For example, except in unusual circumstances, the contingent interest a State has under its laws pertaining to escheat would be considered negligible, and the State would not be considered a beneficiary of the intended ESBT.

ESBT POTENTIAL CURRENT BENEFICIARIES

Section 1361(c)(2)(B)(v) provides that each potential current beneficiary of an ESBT shall be treated as a shareholder for

purposes of determining whether a corporation qualifies as a small business corporation, except that the trust is treated as the shareholder for any period in which there is no potential current beneficiary.

Section 1361(e)(2) provides that, for purposes of § 1361, the term "potential current beneficiary" means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. Section 7701(a)(1) defines person to include a trust for all purposes of the Code where not otherwise distinctly expressed or manifestly incompatible with the intent of the specific provision.

For purposes of § 1361, the following rules apply in defining the term "potential current beneficiary":

1. If a distributee trust becomes entitled to, or at the discretion of any person may receive, a distribution from principal or income of the intended ESBT, then the S corporation election will terminate unless the distributee trust is a trust described in § 1361(c)(2)(A) (e.g., ESBT, qualified subchapter S trust, etc.). In addition, if the distributee trust is a trust described in § 1361(c)(2)(A), the persons described in § 1361(c)(2)(B) are treated as shareholders of the corporation for purposes of determining whether the shareholder restrictions under § 1361(b)(1) are met. In the above example involving the distributee trusts for A's children, the distributee trusts for A's children will become entitled to receive distributions from the ESBT upon A's death. At such time, the S corporation election will terminate unless (i) the distributee trusts are trusts described in § 1361(c)(2)(A), and (ii) the persons described in § 1361(c)(2)(B), with respect to the distributee trusts, satisfy the shareholder restrictions in § 1361(b)(1). If, for example, the distributee trusts are qualified subchapter S trusts, and A's children are the current income beneficiaries, A's children are treated as shareholders of the corporation for purposes of satisfying the shareholder restrictions under § 1361(b)(1).

2. A person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event

(such as the death of the holder of the power of appointment) is not a potential current beneficiary until such time or the occurrence of such event. Whether a person to whom a distribution is or may be made during a period pursuant to a power of appointment is a potential current beneficiary is currently under study.

ESBT DISTRIBUTIONS

Section 641(d)(1) provides that the portion of an ESBT that consists of stock in one or more S corporations (“S portion”) is taxed as a separate trust. Section 641(d)(2)(C) specifies that the only items of income, loss, deduction, or credit to be taken into account by the S portion (“S portion items”) are (i) the items required to be taken into account under § 1366; (ii) any gain or loss from the disposition of stock in an S corporation; and (iii) to the extent provided in regulations, State or

local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

Section 641(d)(3) provides that the S portion items are excluded for purposes of determining the amount of tax on the portion of the trust that is not treated as a separate trust under § 641(d)(1) (“non-S portion”) and are excluded in determining the distributable net income (DNI) of the entire trust. Section 641(d)(3) also provides that, except as otherwise provided, § 641(d) does not affect the taxation of any distribution from the trust.

Guidance has been requested on the treatment of distributions from an ESBT when the trust has fiduciary accounting income in both the S portion and the non-S portion of the trust. Section 641(d)(3) specifically provides that, except as otherwise specified, § 641(d) does not change the taxation of any distribution from the trust. Because the S portion items are not

included in the computation of the ESBT’s DNI, they are treated for purposes of determining the treatment of trust distributions in the same manner as any other item that does not enter into the DNI computation (e.g., capital gains and losses allocated to corpus). For example, for the tax year an ESBT has \$40 of DNI from the non-S portion and \$70 of net fiduciary accounting income from the S portion. If the ESBT makes a distribution of \$100, the distribution includes \$40 of DNI.

DRAFTING INFORMATION

The principal author of this notice is Steven R. Schneider of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Steven R. Schneider at (202) 622-3060 (not a toll-free call).

Part IV. Items of General Interest

Employee Plans and Exempt Organizations; Requests for Certain Determination Letters and Applications for Recognition of Exemption

Announcement 97-89

Purpose

This is to announce new “Where to File” instructions for applications for employee plan determination and other letters, as well as exempt organization applications for recognition of exemption from federal income tax, previously submitted to the Brooklyn Key District Office of Internal Revenue.

Background

The Internal Revenue Service is in the process of centralizing the filing of requests for determination and other letters and applications for recognition of tax exemption. Announcement 95-51, published in Internal Revenue Bulletin 1995-25 at page 132, announced that centralization will be phased in by district. We previously announced the centralization of determination requests formerly sent to the key district offices in Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Dallas, Texas; and Los Angeles, California. With the addition of the Brooklyn Key District, centralization of the initial processing of all employee plan determination letter requests and exempt organization applications for recognition of exemption is complete.

In addition, the Service is consolidating the employee plan volume submitter and regional prototype programs that are presently maintained by each individual key district office. Plans previously approved by a key district office, whose determination letter processing program is being transferred to Cincinnati, will be reviewed using the same criteria and procedures used by the original district office. New guidelines are being developed that will combine the best features and procedures currently in use by the districts. Guidelines for the revised volume submitter and regional prototype programs will be explained in a future announcement.

Instructions

Beginning October 1, 1997, letter requests and applications previously submitted to the Key District Office in Brooklyn, New York, should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below. (For a period of time, requests and applications mistakenly sent to the Brooklyn Key District Office will be forwarded.) The new address applies to requests for determination letters, regional prototype notification letters and volume submitter advisory letters, on the qualified status of employee plans under sections 401, 403(a), and 409, and the exempt status of any related trust under section 501 of the Internal Revenue Code, applications for recognition of tax exemption on Form 1023, Form 1024, and Form 1028, and other applications for recognition of qualification or exemption. The affected plan sponsors and organizations are those whose principal office or place of business is located in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. These requests and applications as well as those formerly submitted to the Atlanta, Baltimore, Cincinnati, Chicago, Dallas, and Los Angeles Key Districts, should be sent to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Applications shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Comments or concerns regarding the centralization of the determination process or applications submitted to the Covington address, may be directed to the EP/EO Customer Service Unit in Cincinnati at (513) 241-5199 (not a toll-free number).

Foundations Status of Certain Organizations

Announcement 97-90

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Advanced Management Institute,
Bethesda, MD
Alliance for Community Entry, Inc.,
Cambridge, MA
The Alterra Connection, Downey, CA
American Disability Fund, Inc.,
Uniondale, NY
American Friends of Ashod Community
Center, Brooklyn, NY
Art & Knowledge Workshop, Inc., New
York, NY
The Associate Artists Opera Company of
New England, Inc. Newtonville, MA
Associated Family Developers, Inc., La
Porte, TX
Association for Multicultural Education
Development, Oklahoma City, OK
Association of Philippine Ophthalmologists
in America, Inc., Rochester, MI
Association of Philippine Ophthalmologists
in America Auxiliary, Rochester, MI
Association of State and Territorial
Chronic Disease Program Directors,
Topeka, KS
Atlantic Cancer Research Foundation,
Inc., Westhampton Beach, NY
Atlantic Coast Chapter of the League of
World War I Aero History, Fair Lawn,
NJ
Auburn-Opelika Sports Corporation,
Auburn, AL

Aya, Inc., Bronx, NY
 Bergen Girls Recreational Softball League, Inc., Montvale, NJ
 Cambridge Theatre Company, Inc., Cambridge, MA
 Capital Philharmonic, Inc., Albany, NY
 Carousel Theater Company, Incorporated, New York, NY
 Centre for Liberian Assistance Inc., Rancho Dominguez, CA
 Christian Outreach and Service Inc., Atlanta, GA
 Chula Vista Housing Corporation, Santa Ana, CA
 Classical Productions, Peekskill, NY
 Clear and Present Productions, Inc., New York, NY
 Common Ground Stage and Film Company, Inc., New York, NY
 Connecticut Yankees Youth Hockey, Inc., Stamford, CT
 Consumer Budget Counseling, Inc., Great Neck, NY
 Danbury Band Aids, Inc., Danbury, CT
 David Layne Ministries Inc., Farmville, VA
 Dayton Prison Ministries, Dayton, TX
 Delight Nutrition, Spring, TX
 Eledra Fund, Inc., Bronx, NY
 Emerson Lights Inc., Emerson, NJ
 Exchange Club Center for the Prevention of Child Abuse of Montgomery County, Montgomery, AL
 Family Worship Center Church Inc., Penns Grove, NJ
 First Night Manassas Inc., Manassas, VA
 Geri-Games Inc., New Braunfels, TX
 Green River Senior Babe Ruth League Inc., Green River, WY
 Hamaayan-The Torah Spring Inc., Silver Spring, MD
 Health for All Inc. DBA Ulster Project, Tucson, AZ
 Jacobs Athletic Association, Chesterfield, VA
 Jow Lung Fund, Washington, DC
 Juniper Tenth Street Resident Management Corporation, Atlanta, GA
 LCH Inc., Ripley, MS
 Leadville Community Broadcast Association, Inc., Leadville, CO
 Mount Lemmon Volunteer Interpreters, Tucson, AZ
 New Jersey Activity Professionals Association, Ringwood, NJ
 Northwest Ohio Prison Ministries Inc., Lima, OH
 Paw-People for Animal Welfare,

Washington, PA
 Pennsylvania Rep Company Inc., Stroudsburg, PA
 Plymouth Downtown Development Association, Plymouth, NC
 Potters House Inc., Washington, DC
 Rapides DARE Inc., Alexandria, LA
 Return-A-Gift Inc., Greencastle, IN
 Rose Tree Colts Inc., Media, PA
 Salisbury Club, St. Louis, MO
 Sierra Leone National Council Inc., Washington, DC
 Spearfish Youth Baseball Assoc. Inc., Spearfish, SD
 South Memphis Child Development Center, Memphis, TN
 Tennessee Association of Housing & Redevelopment Authorities, Nashville, TN
 Visions Entertainment Concepts Inc., Washington, DC
 Way Station, Parker, CO
 Whitefish Bay Public Education Foundation, Inc., Milwaukee, WI
 World Peace Foundation Inc., Tampa, FL
 Wyoming Lighthouse Inc., Laramie, WY
 Youth Panorama Inc., Tucumari, NM

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Inbound Grantor Trusts With Foreign Grantors; Correction Announcement 97-93

AGENCY: Internal Revenue Service, Treasury

ACTION: Correction to a notice of proposed rulemaking and notice of public hearing

SUMMARY: This document contains corrections to the notice of proposed rulemaking and notice of public hearing

(REG-252487-96 [1997-25 I.R.B. 9]), which was published in the **Federal Register** Thursday, June 5, 1997 (62 F.R. 30785), relating to the application of the grantor trust rules to certain trusts established by foreign persons.

FOR FURTHER INFORMATION CONTACT: James Quinn, (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections is under sections 643, 671 and 672 of the Internal Revenue Code.

Need for Correction

As published, REG-252487-96 contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG-252487-96), which was the subject of F.R. Doc. 97-14735, is corrected as follows:

1. On page 30786, column 1, in the preamble under the paragraph heading “1. *Prior Law*”, paragraph 2, line 5, the language “the grantor, a distribution of income” is corrected to read “the owner, a distribution of income”.

2. On page 30787, column 2, in the preamble under the paragraph heading “3. *Section 1.672(f)-1: Foreign Persons Not Treated as Owners*”, fourth full paragraph in the column, line 7, the language “basic grantor trust rules from treating a” is corrected to read “basic grantor trust rules from treating a foreign”.

§ 1.672(f)-2 [Corrected]

3. On page 30793, column 1, § 1.672(f)-2 (d), *Example 3*, second line from the bottom of the column, the language “no deductions or losses for 199X. Under” is corrected to read “no deductions or losses for 1999. Under”.

4. On page 30793, column 2, § 1.672(f)-2, paragraph (d) is correctly designated as paragraph (e).

§ 1.672(f)-3 [Corrected]

5. On page 30793, column 3, § 1.672(f)-3 (a)(3), *Example 1*, line 1, the paragraph heading “*Owner is grantor.*” is corrected to read “*Death of Grantor.*”

6. On page 30793, column 3, § 1.672(f)-3 (a)(3), *Example 2*, line 1, the paragraph heading “*Owner not grantor.*” is corrected to read “*Death of grantor.*”

§ 1.672(f)-4 [Corrected]

7. On page 30795, column 3, § 1.672(f)-4 (d), line 6, the language “value) to a person who is not a partner” is corrected to read “value, within the meaning of § 1.671-2 (e)(4)(i)(A)) to a person who is not a partner”.

Cynthia E. Grigsby,
Chief, Regulations Unit
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on July 14, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 15, 1997, 62 F.R. 37819)

Inbound Grantor Trusts With Foreign Grantors; Correction to Correction Announcement 97-94

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to correction of a notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to the correction of the proposed rulemaking and notice of public hearing (REG-252487-96), which was published in the **Federal Register** Tuesday, July 15, 1997 (62 F.R. 37819), relating to the application of the grantor trust rules to certain trusts established by foreign persons.

FOR FURTHER INFORMATION CONTACT: M. Grace Fleeman (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

September 8, 1997

The correction notice that is the subject of this correction contains corrections to the notice of proposed rulemaking and notice of public hearing under sections 643, 671 and 672 of the Internal Revenue Code.

Need for Correction

As published, the correction notice for REG-252487-96 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to notice of proposed rulemaking and notice of public hearing (REG-252487-96), which was the subject of F.R. Doc. 97-18444, is corrected as follows:

1. On page 37819, column 1 in the preamble under the caption **FOR FURTHER INFORMATION CONTACT:** the language “James Quinn, (202) 622-3060 (not a toll-free number).” is corrected to read “M. Grace Fleeman (202) 622-3850 (not a toll-free number).”

§ 1.672(f)-3 [Corrected]

2. On page 37819, column 2, § 1.672(f)-3, amendatory instruction, last two lines, the language “paragraph heading ‘*Owner is grantor.*’ is corrected to read ‘*Death of grantor.*’” is corrected to read “paragraph heading ‘*Owner is grantor.*’” is corrected to read ‘*Grantor is owner.*’”.

Cynthia E. Grigsby,
Chief, Regulations Unit
Assistant Chief Counsel
(Corporate).

(Filed by the Office of the Federal Register on July 25, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 28, 1997, 62 F.R. 40316)

Permitted Elimination of Preretirement Optional Forms of Benefits; Hearing Announcement 97-95

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations that would permit an amendment to a qualified plan that eliminates certain Preretirement optional forms of benefit. DATES: The public hearing is being held on Tuesday, October 28, 1997, beginning at 10:00 a.m.

ADDRESSES: The public hearing originally scheduled in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC is changed to room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, July 2, 1997 (62 F.R. 35752 [REG-107644-97, 1997-32 I.R.B. 24]), announced that a public hearing relating to proposed regulations under section 411 (d) of the Internal Revenue Code will be held Tuesday, October 28, 1997, beginning at 10:00 a.m. in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 111 Constitution Avenue NW, Washington, DC and that requests to speak and outlines of oral comments should be received by Tuesday, September 30, 1997.

The location of the public hearing has changed. The hearing is being held in room 2615 on Tuesday, October 28, 1997, beginning at 10:00 a.m. The requests to speak and outlines of oral comments should have been received by Tuesday, September 30, 1997. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Cynthia E. Grigsby,
Chief, Regulations Unit
Assistant Chief Counsel
(Corporate).

(Filed by the Office of the Federal Register on July 14, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 15, 1997, 62 F.R. 37818)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 1997–27 through 1997–35

Announcements:

97–61, 1997–29 I.R.B. *13*
97–67, 1997–27 I.R.B. *37*
97–68, 1997–28 I.R.B. *13*
97–69, 1997–28 I.R.B. *13*
97–70, 1997–29 I.R.B. *14*
97–71, 1997–29 I.R.B. *15*
97–72, 1997–29 I.R.B. *15*
97–73, 1997–30 I.R.B. *86*
97–74, 1997–31 I.R.B. *16*
97–75, 1997–32 I.R.B. *28*
97–76, 1997–32 I.R.B. *28*
97–77, 1997–33 I.R.B. *58*
97–78, 1997–34 I.R.B. *11*
97–79, 1997–35 I.R.B. *8*
97–80, 1997–34 I.R.B. *12*
97–81, 1997–34 I.R.B. *12*
97–82, 1997–34 I.R.B. *12*
97–83, 1997–34 I.R.B. *13*
97–84, 1997–34 I.R.B. *13*
97–85, 1997–35 I.R.B. *8*
97–86, 1997–35 I.R.B. *9*
97–87, 1997–35 I.R.B. *9*
97–88, 1997–35 I.R.B. *9*

Court Decisions:

2061, 1997–31 I.R.B. *5*
2062, 1997–32 I.R.B. *8*

Delegation Orders:

172 (Rev. 5), 1997–28 I.R.B. *6*

Notices:

97–37, 1997–27 I.R.B. *4*
97–38, 1997–27 I.R.B. *8*
97–39, 1997–27 I.R.B. *8*
97–40, 1997–28 I.R.B. *6*
97–41, 1997–28 I.R.B. *6*
97–42, 1997–29 I.R.B. *12*
97–43, 1997–30 I.R.B. *9*
97–44, 1997–31 I.R.B. *15*
97–45, 1997–33 I.R.B. *7*
97–46, 1997–34 I.R.B. *10*
97–47, 1997–35 I.R.B. *5*
97–48, 1997–35 I.R.B. *5*

Railroad Retirement Quarterly Rate:

1997–28 I.R.B. *5*

Proposed Regulations:

REG–104893–97, 1997–29 I.R.B. *13*
REG–107644–97, 1997–32 I.R.B. *24*

Revenue Procedures:

97–32, 1997–27 I.R.B. *9*
97–32A, 1997–34 I.R.B. *10*
97–33, 1997–30 I.R.B. *10*
97–34, 1997–30 I.R.B. *14*
97–35, 1997–33 I.R.B. *11*
97–36, 1997–33 I.R.B. *14*
97–37, 1997–33 I.R.B. *18*
97–38, 1997–33 I.R.B. *43*
97–39, 1997–33 I.R.B. *48*
97–40, 1997–33 I.R.B. *50*

97–41, 1997–33 I.R.B. *5*
97–42, 1997–33 I.R.B. *57*

Revenue Rulings:

97–27, 1997–27 I.R.B. *4*
97–28, 1997–28 I.R.B. *4*
97–29, 1997–28 I.R.B. *4*
97–30, 1997–31 I.R.B. *12*
97–31, 1997–32 I.R.B. *4*
97–32, 1997–33 I.R.B. *4*
97–33, 1997–34 I.R.B. *4*
97–34, 1997–34 I.R.B. *14*
97–35, 1997–35 I.R.B. *4*

Treasury Decisions:

8722, 1997–29 I.R.B. *4*
8723, 1997–30 I.R.B. *4*
8726, 1997–34 I.R.B. *7*
8727, 1997–34 I.R.B. *5*

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Finding List of Current Action on Previously Published Items¹

Bulletins 1997–27 through 1997–35

*Denotes entry since last publication

Revenue Procedures:

96–36

Superseded by
97–34, 1997–30 I.R.B. *14*

96–42

Superseded by
97–27, 1997–27 I.R.B. *9*

97–32

Modified and amplified by
97–32A, 1997–34 I.R.B. *10*

Revenue Rulings:

89–42

Supplemented by
97–31, 1997–32 I.R.B. *4*

¹ A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

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